



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 6, 2003

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2003-3894

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183009.

The Garland Police Department (the "department") received a request for information relating to a named individual. You claim that the requested information is excepted from public disclosure under section 552.101 of the Government Code. You also ask whether the requestor has a special right of access to the information. We have considered your arguments and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Chapter 261 of the Family Code governs information relating to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 of the Family Code provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the submitted information consists of files, reports, records, communications, and working papers used or developed in investigations made under chapter 261 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Therefore, this information is excepted from public disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.

Section 261.201 of the Family Code provides, however, for the disclosure of confidential information if the release of the information is consistent with the Family Code and applicable federal or state law. *See* Fam. Code § 261.201(a). In this particular instance, the request for information was made by a representative of the Parole Division of the Texas Department of Criminal Justice ("TDCJ"). The request reflects that TDCJ needs the information for the purpose of evaluating an inmate for parole consideration. In this regard, section 508.311 of the Government Code provides as follows:

On request of a member of the board or employee of the board or department, a public official of the state, including a judge, district attorney, county attorney, or police officer, who has information relating to an inmate eligible for parole shall send to the department in writing the information in the official's possession or under the official's control.

Gov't Code § 508.311. The word "department" in section 508.311 means TDCJ. *See id.* § 491.001(a)(3) (defining "department" for purposes of Gov't Code tit. 4 subtit. G). Thus, section 508.311 of the Government Code requires that information relating to an inmate eligible for release on parole be provided to TDCJ. We find that section 508.311 constitutes an "applicable federal or state law" for purposes of section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(a). We also find that the release of the submitted information in this instance is not inconsistent with the purposes of the Family Code. *See also* 40 T.A.C. § 700.203(a)(1) (authorizing Department of Protective and Regulatory Services to release information made confidential under Fam. Code § 261.201(a) to local, state, or federal government official when specifically required by law or when deemed necessary for protection and care of child). We therefore conclude that the department must release the submitted information to this requestor in accordance with section 508.311 of the Government Code. We note that the release of this information under these specific circumstances is not a disclosure of confidential information to the public for purposes of

section 552.352 of the Government Code or a selective disclosure of information for purposes of section 552.007. *See also* Open Records Decision No. 655 at 8 (1997) (information excepted from public disclosure under Gov't Code ch. 552 may be transferred between agencies without destroying its confidential character if agency to which information is transferred has authority to obtain it).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

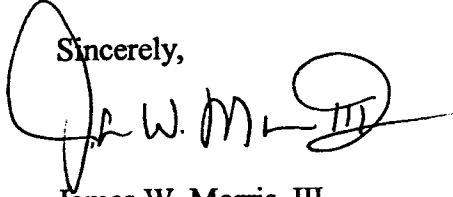
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a distinct "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/seg

Ref: ID# 183009

Enc: Submitted documents

c: Mr. Phillip Doughty
Central Region Institutional Parole Office
Texas Department of Criminal Justice
1650 7th Street
Huntsville, Texas 77320
(w/o enclosures)